

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Richard J. Klein,)	
)	Case No. 1:01-CV-794
Petitioner,)	
)	
vs.)	
)	
Harold Carter,)	
)	
Respondent.)	

Order Overruling Objection

On February 14, 2005, in response to repeated arguments by Respondent that Petitioner has failed to exhaust certain of his claims in light of his failure to seek delayed direct appeal to the Ohio Supreme Court with respect thereto, United States Magistrate Judge Timothy S. Black issued an order directing Petitioner to inform the Court whether he intends to pursue such a remedy. The Magistrate Judge's order did not address the merits of any of Petitioner's claims nor of Respondent's waiver arguments. Rather, the order directed Petitioner to clarify whether he intended to pursue a potentially available remedy.

In lieu of a response to the Magistrate Judge's order, Petitioner Klein filed an objection attacking the order as though it were a resolution of issues of procedural default and/or waiver on their merits. Petitioner's arguments in support of his objection are misplaced. The only appropriate response to the order would have been an indication that Petitioner intends or does not intend to seek a delayed direct appeal to the Ohio Supreme Court.

Petitioner's objection is **OVERRULED** because he has not demonstrated that the Magistrate Judge erred by requiring him to make such a clarification on the record. The deadline for his response to the Magistrate Judge's order is hereby **EXTENDED** to April 8, 2005. In the event that Petitioner fails to respond appropriately on or before that date, the Court will construe his failure as an indication that he does not intend to pursue a delayed direct appeal to the Ohio Supreme Court.

IT IS SO ORDERED.

/s/
Sandra S. Beckwith, Chief Judge
United States District Court